

FILED

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 09C018479

vs.

Fernandez, N. Kolas A.

Defendant.

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY (Nonfelony)
(STTDFG)

1. My true name is Nikolas A. Fernandez

2. My date of birth is 11/10/88

3. I went through the 13 grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer; if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Kurt Stender

(b) I am charged with the crime(s) of Assault 4th

The elements of this (these) crime(s) are set forth in the information/ 2 amended information, which is incorporated by reference and which I have reviewed with my lawyer.

FORM REV 5/08

STATEMENT OF DEFENDANT ON PLEA OF GUILTY
(Nonfelony) - 1

1 5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE
2 FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY
PLEADING GUILTY:

3 (a) The right to a speedy and public trial by an impartial jury in the county where the crime
4 is alleged to have been committed;

5 (b) The right to remain silent before and during trial, and the right to refuse to testify against
6 myself;

7 (c) The right at trial to testify and to hear and question the witnesses who testify against me;

8 (d) The right at trial to have witnesses testify for me. These witnesses can be made to
9 appear at no expense to me;

10 (e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt
11 or I enter a plea of guilty;

12 (f) The right to appeal a determination of guilt after a trial.

13 6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I
14 UNDERSTAND THAT:

15 (a) The crime(s) with which I am charged carries a maximum sentence(s) of 365
16 days in jail and a \$ 5000 fine.

17 (b) The crime of _____ has a mandatory minimum
18 sentence of _____. The law does not allow any reduction of this sentence.

19 [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge
20 _____.]

21 (c) The prosecuting attorney will make the following recommendation to the judge: _____

22 365/365, ~~\$5000 fine~~, Restitution TBD, 240 hours
of Community Restitution, NCLV, NCO w/ Robert Hinojosa and
Joshua Johnston. Defense to Ask for Det. Sentence.

FORM REV 5/08

STATEMENT OF DEFENDANT ON PLEA OF GUILTY

(Nonfelony) - 2

Costs, CVA, NF

1
2 ☒ The prosecutor will make the recommendation stated in the Plea Agreement and State's
3 Sentence Recommendation, which are incorporated by reference.

4 (d) The judge does not have to follow anyone's recommendation as to sentence. The judge
5 can give me any sentence up to the maximum authorized by law no matter what the prosecuting
6 attorney or anyone else recommends.

7 (e) The judge may place me on probation for up to five years if I am sentenced under RCW
8 46.65.5055 or up to two years for all other offenses and impose conditions of probation.

9 (f) The judge will order me to pay a victim's compensation fund assessment. The judge may
10 order that I pay a fine, attorney fees, and other costs, fees and assessments authorized by law. The
11 judge may also order me to make restitution to any victims who lost money or property as a result of
12 crimes I committed. The maximum amount of restitution is double the amount of the loss to all
13 victims or double the amount of my gain.

14 (g) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a
15 crime under state law is grounds for deportation, exclusion from admission to the United States, or
16 denial of naturalization pursuant to the laws of the United States.

17 (h) If I am convicted of any new crimes before sentencing, or if any additional criminal
18 history is discovered, the prosecuting attorney's recommendations may increase. Even so, I cannot
19 change my mind and my plea of guilty to this charge is binding on me.

20
21 **NOTIFICATION RELATING TO SPECIFIC CRIMES.**

22 **For any of the Following Paragraphs That Do Not Apply, the Paragraph
Should be Stricken and Initialed by the Defendant and the Judge.**

1
2 (i) If this crime involves a sexual offense, prostitution, or a drug offense associated with
3 hypodermic needles, I will be required to undergo testing for the human immunodeficiency virus
4 (HIV). [If not applicable, this paragraph should be stricken and initialed by the defendant and the
5 judge NF ____.]

6 (j) This plea of guilty will result in revocation of my privilege to drive by the Department of
7 Licensing. If I have a driver's license, I must now surrender it to the judge. [If not applicable, this
8 paragraph should be stricken and initialed by the defendant and the judge NF ____.]

9 (k) This crime was committed by one family or household member against another and is
10 assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first
11 degree, or violation of provisions of a protective order. I understand that I am not permitted to
12 possess, own, or have under my control any firearm unless my right to do so is restored by a court of
13 record and that I must immediately surrender any concealed pistol license. [If not applicable, this
14 paragraph should be stricken and initialed by the defendant and the judge NF ____.]

15 (l) This crime involved driving while under the influence of alcohol and/or being in actual
16 physical control of a vehicle while under the influence of alcohol and/or drugs, and I understand that
17 I will be subject to

18 [] The penalties described in the "DUI" Attachment.

19 OR

20 [] these minimum penalties: The mandatory minimum sentence of _____ days in
21 jail OR _____ days of electronic home monitoring and \$_____ monetary
22 penalty. I may also be required to drive only motor vehicles equipped with an ignition

1 interlock device as imposed by the Department of Licensing or the court. My driving
2 privilege will be suspended or revoked by the Department of Licensing for a period of
3 _____. The court may waive electronic home monitoring and impose an
4 alternative sentence, which may include additional jail time, work crew or work camp.

5 [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge

6 NF ____.]

7 (m) This crime involved sexual misconduct with a minor in the second degree,
8 communication with a minor for immoral purposes, or attempt, solicitation or conspiracy to commit
9 a sex offense, or a kidnapping offense involving a minor, as defined in RCW 9A.44.130. I will be
10 required to register with the county sheriff as described in the "Offender Registration" attachment.

11 [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge

12 NF ____.]

13 (n) This crime involved Assault 4 with Sexual Motivation, Communication with a Minor
14 for Immoral Purposes, Custodial Sexual Misconduct 2, Failure to Register, Harassment, Patronizing
15 a Prostitute, Sexual Misconduct with a Minor 2, Stalking, Violation of a Sexual Assault Protection
16 Order, or any other offense requiring registration under RCW 9A.44.130. I will be required to have
17 a biological sample collected for purposes of DNA identification analysis. RCW 43.43.754.

18 [If not applicable, this paragraph should be stricken and initialed by the defendant and the

19 judge. NF ____.]

20 (o) Because this crime involved a violation of the state drug laws, my eligibility for state
21 and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and
22

21 U.S.C. § 862a. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge NF.]

7. I plead guilty to the crime(s) of Assault in the fourth Degree

as charged in the information/ X amended information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this (these) crime(s). This is my statement:

Alford Plea: I have reviewed the discovery with my attorney. Although I maintain my innocence, I believe there is a substantial likelihood I would be found guilty if this case were to go to trial. I would like to take advantage of the State's offer, so I change my plea to Assault in the fourth degree from "Not guilty" to "guilty."

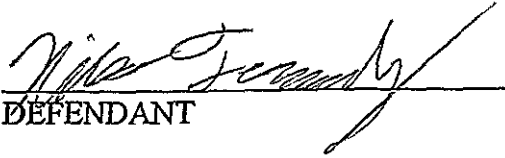
The court may review the Certification for Determination of Probable Cause for purposes of this plea and for Sentencing.

FORM REV 5/08


STATEMENT OF DEFENDANT ON PLEA OF GUILTY
(Nonfelony) - 6


NF

1 12. My lawyer has explained to me, and we have fully discussed, all of the above
2 paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on
3 Plea of Guilty." I have no further questions to ask the judge.

4
5 
DEFENDANT

6 I have read and discussed this statement
7 with the defendant and believe that the
8 defendant is competent and fully
9 understands the statement.

10 
PROSECUTING ATTORNEY
11 Print Name: 15935
WSBA#

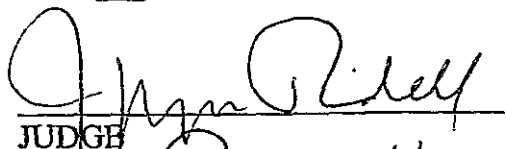
12 
DEFENDANT'S LAWYER
13 Print Name: Kurt Stender
WSBA# 32176

14 The foregoing statement was signed by the defendant in open court in the presence of the
15 defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- 16 ☐ (a) The defendant had previously read; or
17 ☒ (b) The defendant's lawyer had previously read to him or her; or
18 ☐ (c) An interpreter had previously read to the defendant the entire statement above;
19 and that the defendant understood it in full.

20 I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The
21 defendant understands the charges and the consequences of the plea. There is a factual basis for the
22 plea. The defendant is guilty as charged.

Dated this 15th day of June, 2009.


JUDGE Romsdahl

1
2 I am a certified interpreter or have been found otherwise qualified by the court to interpret in
3 the _____ language and I am fluent in that language, which the
4 defendant understands. I have translated this entire document for the defendant from English into
5 that language. I certify under penalty of perjury under the laws of the State of Washington that the
6 foregoing is true and correct.

Dated this _____ day of _____, 20____.

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TRANSLATOR

Print Name: _____

INTERPRETER

Print Name: _____

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Nikolas Fernandez

Defendant,

No. 09-C-01847-9 SEA

AMENDED INFORMATION

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the state of Washington, by this Amended Information do accuse the defendant(s) of the crime of

Assault 1st

That the defendant(s), Nikolas Fernandez, in King County, Washington, (on or about) ~~(during a time intervening)~~ the 23 day of November, 2008, did intentionally assault Robert Hinojosa, a human being

Contrary to RCW 9A.36.041, and against the peace and dignity of the state of Washington.

DANIEL T. SATTERBERG
Prosecuting Attorney

By Craig
Deputy Prosecuting Attorney

CAUSE NO. _____



SEATTLE
POLICE
DEPARTMENT

**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

GENERAL OFFENSE # 2008-438983
UNIT FILE NUMBER

That Detective D. N. Duffy is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 2008-438983;

There is probable cause to believe that Nikolas A. Fernandez H/M 11-10-88 and Miles A. Schwab W/M 11-18-87 committed the crime(s) of Assault within the City of Seattle, County of King, State of Washington.

This belief is predicated on the following facts and circumstances:

On 11/23/08, Officer C. Carpenter #6108 was dispatched to Swedish Medical Center to investigate an assault. Victims Robert I. Hinojosa and Joshua Johnston stated as they walked down the sidewalk, two known schoolmates, Nikolas Fernandez and Miles Schwab, confronted them. Hinojosa stated Fernandez and Schwab walked up to them and asked them if they were "talking shit". Hinojosa told them that no one was "talking shit". Hinojosa said Fernandez then threw a punch at him. Hinojosa said Fernandez and Schwab continued to punch him repeatedly in the face and pushed him into some bushes. Hinojosa said he had a previous incident with Fernandez and believes Fernandez attacked him because of the previous incident.

Johnston stated as he walked with Hinojosa he recognized his two schoolmates, Fernandez and Schwab. Johnston stated he had no issues with the two. Johnston stated they walked up and asked if they were "talking shit". Johnston stated he then saw Fernandez and Schwab punching Hinojosa. Johnston stated he was blindsided by Schwab with a punch and doesn't remember anything after that as he lost consciousness. The next recollection that Johnston had was being at his house and his jaw hurting. Johnston stated he went to Swedish Medical Center and was diagnosed with a fractured jaw and required surgery 2 days after the assault.

Hinojosa stated he too was seen at Swedish Medical Center and received several stitches in his eyebrow, and diagnosed with fractured nose and they also thought he had a fractured rib, however it was an injury within the cartilage of the chest.

Both Johnston and Hinojosa positively identified Schwab and Fernandez as the assailants. They both stated they went to school with them and knew them personally.

I spoke with Schwab and Fernandez who stated they were walking down the same street as Johnston and Hinojosa and that Hinojosa threw the first punch at Fernandez (however, neither Schwab or Fernandez reported the assault to authorities). Schwab stated he got involved in the fight to assist his friend Fernandez. Schwab stated that his punches caused the most damage. Neither Schwab nor Fernandez required any medical treatment, nor complained of any injury.

According to NCIC/Triple I, reveals that neither Fernandez or Schwab have a criminal history.

ORIGINAL



SEATTLE
POLICE
DEPARTMENT

**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

INCIDENT NUMBER 2008-438983
UNIT FILE NUMBER

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 9 day of March, 2009, at Seattle, Washington.

Det. D. D. D. #6218

ORIGINAL

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8 CAUSE NO. 09-C-01847-9 SEA
CAUSE NO. 09-C-01848-7 SEA

9 PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
10 CONDITIONS OF RELEASE

11 The facts are set out in the attached Certification for Determination of Probable Cause.

12 REQUEST FOR BAIL

13 The State requests that a summons issue for each defendant.

14 Both defendants should be ordered to have no contact with Robert Hinojosa and Joshua
15 Johnston as well as their co-defendant.

16 Signed this ____ day of _____, 2009.

17
18 _____
Craig A. Peterson, WSBA #15935

NON-FELONY PLEA AGREEMENT AND STATE'S RECOMMENDATION

Date of Crime: 11-23-08

Date: 6-12-09

Defendant: Fernandez, Nikolaj Cause No: 09-C-01847-9 SEA/4/NT

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is as follows:

On Plea To: As charged in Count(s) I of the ☐ original ☒ amended information. ☐ With Special Finding(s): ☐ domestic violence, RCW 10.99.020; ☐ other _____; for count(s): _____

☐ DISMISS: Upon disposition of Count(s) _____, the State moves to dismiss Count(s): _____

☒ REAL FACTS: The parties have stipulated that the facts set forth in the certification(s) for determination of probable cause and prosecutor's summary are real and material facts for purposes of this sentencing.

The STATE RECOMMENDS, pursuant to RCW chapter 9.95:

☐ Imposition of sentence on Count(s) _____ be DEFERRED for a period of _____ months (probation period may not exceed 24 months on each count), on the FOLLOWING CONDITIONS:

☒ Sentence of 12 months in the King County Jail on Count(s) I (concurrent)(consecutive), but execution SUSPENDED with a probation termination date of 12 months (probation period may not exceed 24 months on each count), on the FOLLOWING CONDITIONS:

☐ SERVE _____ days/ months on Count _____ and _____ days/ months on Count _____ in ☐ the King County Jail; ☐ Work/ Education Release; ☐ Electronic Home Detention; with credit for all days served solely on this cause. Terms to be served concurrent/ consecutive with each other. Terms to be served concurrently/ consecutively with _____ Terms to be consecutive with any other term not referenced on this page.

☐ This is an agreed recommendation.

☒ MONETARY CONDITIONS: court costs, victim penalty assessment, recoupment for appointed counsel, WSP lab fee of \$100, incarceration costs of \$50 per day (in King County Jail), and _____

☒ RESTITUTION: The defendant shall pay restitution in full to the victim(s) on charged counts and ☒ agrees to pay restitution in the specific amount of \$ On account to be determined for all losses. ☐ agrees to pay restitution _____

☒ Complete 240 hours of COMMUNITY RESTITUTION ☐ within 6 months of sentencing; ☐ by _____

☐ SUPERVISED PROBATION under the jurisdiction of and subject to standard rules of supervision of the Washington Department of Corrections or King County Probation Department.

☒ Have NO LAW VIOLATIONS

☒ Have NO CONTACT WITH: Robert Hinojosa and Joshua Johnston

☐ CRIME VICTIM(S) _____ as a condition of sentence ☐ and RCW 10.99 or RCW 26.50.

☐ MINORS, EXCEPT WITH SUPERVISION

☐ _____

☐ Do not possess or use ALCOHOL OR NON-PRESCRIBED DRUGS

☐ Obtain an ☐ ALCOHOL/ SUBSTANCE ABUSE EVALUATION ☐ MENTAL HEALTH EVALUATION within 30 days of sentencing and comply with recommended TREATMENT, including taking prescribed medication.

☐ Enter within 30 days of sentencing and complete a state-certified DOMESTIC VIOLENCE TREATMENT program.

☐ OTHER: _____

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new charged or uncharged crimes, fails to appear for sentencing or violates the conditions of release. The recommendation assumes that prior convictions have been fully disclosed and are set forth in Appendix B.

Maximum on Count(s) I is not more than 12 months each and \$ 5,000 fine each.
Maximum on Count(s) _____ is not more than _____ months each and \$ _____ fine each.

MANDATORY CONSEQUENCES: HIV test (RCW 70.24.340) for any sex offense or prostitution related offense, or drug offense with needle use; DNA test (as required by RCW 43.43.754); Revocation of right to possess a FIREARM (RCW 9.41.040) for some domestic violence offenses; DRIVER'S LICENSE REVOCATION (RCW 46.20.285; RCW 69.50.420); OFFENDER REGISTRATION (RCW 9A.44.130, 140).

[Signature]
Defendant
Kurt Stenke
Attorney for Defendant 3276

[Signature]
Deputy Prosecuting Attorney 5435
[Signature]
Judge, King County Superior Court

**APPENDIX B TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)**

Defendant: **MILES SCHWAAB**

FBI No.: **55668AD9**

State ID No.: **WA24594905**

DOC No.:

This criminal history compiled on: **March 30, 2009**

- | | |
|--------------------------|--|
| <input type="checkbox"/> | None known. Recommendations and standard range assumes no prior felony convictions. |
| <input type="checkbox"/> | Criminal history not known and not received at this time. WASIS/NCIC last received on 03/30/2009 |

Adult Felonies - None Known

Adult Misdemeanors - None Known

Juvenile Felonies - None Known

Juvenile Misdemeanors - None Known

Comments